



Federal Communications Commission  
Consumer & Governmental Affairs Bureau  
Washington, D.C. 20554

02-2781  
**CCB**

**DEC 23 2004**

Control No. 0403804

The Honorable Elton Gallegly  
U.S. House of Representatives  
2829 Townsgate Road, Suite 315  
Thousand Oaks, CA 91361

**DOCKET FILE COPY ORIGINAL**

Dear Congressman Gallegly:

Thank you for your letter on behalf of your constituent, Mr. Paul Reese, the owner of Golden Express, regarding the Commission's recent amendments to its rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). Mr. Reese has apparently received letters from individuals threatening to sue him for violations of the TCPA's unsolicited facsimile advertisement rules.

The TCPA prohibits the use of "any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine." The TCPA applies only to those facsimile messages that constitute "unsolicited advertisements," which are defined as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission." See 47 U.S.C. § 227(b)(1)(C) and 47 U.S.C. § 227(a)(4). In July 2003, the Commission amended the facsimile advertising rules so that all entities that wish to transmit advertisements to a facsimile machine must first obtain permission from the recipients in writing.

The Commission's amended facsimile advertising rules were initially scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July Report and Order, the Commission, on its own motion, determined to delay the effective date of some of the facsimile advertising rules, including the elimination of the "established business relationship" exemption, until July 1, 2005. The comments filed after the release of the Report and Order indicated that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. Enclosed is a copy of the Commission's recent Order, released on October 1, 2004.

In addition, following the release of the July 2003 Report and Order, the Commission received over 60 petitions for reconsideration and/or clarification of the amended rules, the majority of which raise issues related to the rules on fax advertising and the definition of "unsolicited advertisement." These petitions are currently under review and pending before the Commission. Therefore, we have placed a copy of your correspondence in the public record for this proceeding.

Finally, while the TCPA gives the Commission authority to enforce the provisions of the TCPA, it also provides consumers with a private right of action in state courts to enjoin unlawful conduct and recover damages for violations of the TCPA. The Commission has declined to make any determinations about the specific contours of the TCPA's private right of action. Congress provided consumers with a private right of action, "if otherwise permitted by the laws or rules of court of a State." The Commission has concluded that this language suggests that Congress contemplated that such legal action was a matter for consumers to pursue in appropriate state courts, subject to those courts' rules. The Commission believes it is for Congress, not the Commission, to either clarify or limit this right of action.

Enclosed is additional information that Mr. Reese may find helpful. The Commission has available an e-mail service designed to apprise consumers about developments at the Commission, to disseminate consumer information materials prepared by the Commission to a wide audience and to invite comments from other parties on Commission regulatory proposals. This free service enables consumers to subscribe and receive FCC fact sheets, consumer brochures and alerts, and public notices, among other consumer information. To subscribe, an individual should send an e-mail to [subscribe@info.fcc.gov](mailto:subscribe@info.fcc.gov) and, in either the subject line or the message insert: "subscribe fcc-consumer-info first name last name" (e.g., "subscribe fcc-consumer-info John Doe").

We invite Mr. Reese to visit the Consumer & Governmental Affairs Bureau's Internet web site at <http://www.fcc.gov/cgb>. Information on all telecommunications-related issues can be accessed via the Internet from the Commission's Home Page located at <http://www.fcc.gov>. Information is also available by calling toll free 1-888-225-5322. TTY users may call 1-888-835-5322.

We appreciate your inquiry. If you have any further questions or require additional information, please do not hesitate to contact us.

Sincerely,



K. Dane Snowden  
Chief

Consumer & Governmental Affairs Bureau

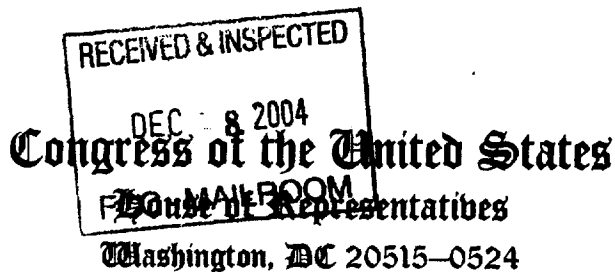
Enclosures

ELTON GALLEGLY  
24TH DISTRICT, CALIFORNIA  
www.house.gov/gallegly/

2427 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-0523  
(202) 225-5811

2829 TOWNSGATE ROAD, SUITE 315  
THOUSAND OAKS, CA 91361  
(800) 423-0023  
(805) 497-2224

485 ALISAL ROAD, SUITE G-1A  
SOLVANG, CA 93463  
(800) 423-0023  
(805) 686-2525



December 1, 2004

Federal Communications Commission  
ATTN: Congressional Liaison  
1919 M Street  
Washington, DC 20554-0001

Dear Sir/Madam:

We are writing at the request of our constituent, Paul Reese, owner of Golden Express, in Oxnard, CA.

His company received the enclosed two letters from individuals threatening to sue him for allegedly sending them unsolicited faxes.

According to Mr. Reese, he belongs to an advertising association that has an agreement among members that they can send faxes to each other.

He states he requested Robert Labossiere, writer of one letter, and not an attorney as the letter seems to imply, to tell him to whom he had allegedly sent fax and he would remove that person from his approved list. Labossiere did not provide any more information, and Mr. Reese has not heard from him since.

The second letter, from Joseph P. Compoli, orders Mr. Reese to appear in court in Ohio or pay \$3400.

Mr. Reese believes both are "legal extortion" letters and both use a federal law to extort money from legitimate business owners.

Please review and provide our office information sufficient to respond.

Thank you for whatever consideration you can offer.

Sincerely,

ELTON GALLEGLY  
Member of Congress  
*Paula Sheil*  
by Paula Sheil  
District Director  
enclosure

Please reply to:  
2829 Townsgate Road #315  
Thousand Oaks, CA 91361  
805-497-2224 telephone  
805-497-0039 fax

COMMITTEES:  
INTERNATIONAL RELATIONS  
SUBCOMMITTEES:  
• CHAIRMAN, INTERNATIONAL TERRORISM,  
NONPROLIFERATION AND HUMAN RIGHTS  
• EUROPE  
JUDICIARY  
SUBCOMMITTEES:  
• IMMIGRATION, BORDER SECURITY, AND CLAIMS  
• COURTS, THE INTERNET, AND INTELLECTUAL  
PROPERTY  
RESOURCES  
SUBCOMMITTEE:  
• NATIONAL PARKS, RECREATION, AND PUBLIC  
LANDS  
HOUSE PERMANENT SELECT  
COMMITTEE ON INTELLIGENCE  
SUBCOMMITTEES:  
• TECHNICAL AND TACTICAL INTELLIGENCE  
• INTELLIGENCE POLICY AND NATIONAL SECURITY  
• TERRORISM AND HOMELAND SECURITY

*CBP  
Policy -  
Other  
Wash-Fax  
3804*

B DEC 2004 RCU D

**ROBERT LABOSSIERE**

SUITE 353

19528 VENTURA BLVD

TARZANA, CALIFORNIA 91356

TELEPHONE: (818) 642-2282

Email: [enforce@social.fr.com](mailto:enforce@social.fr.com)

*NOT A LAWYER*  
AUGUST 16, 2004

*Paul Reese*

499-201-2130  
1915 290-8459  
5167 Via

*Capt  
N.P.  
91320*

Golden Express  
Express Line  
1500 Beacon Place  
Oxnard, CA 93033

Re: Violation of Telephone Consumer Protection Act

I am writing to you regarding your unsolicited facsimile transmission(s) of advertising to me, I recently received two unsolicited fax transmissions from your company.

This was sent to me without my express invitation or permission.

A federal law enacted in 1991 called the Telephone Consumer Protection Act (the "TCPA") makes it illegal to use any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine. 47 U.S.C. § 227(b)(1). The federal law also provides that a person who sends such an advertisement by fax is liable for \$500 in damages for each fax. If the court finds that the defendant acted willfully or knowingly (that is, you knew you were sending unsolicited faxes, regardless of whether you knew about the TCPA), the court may triple the damage award. See 47 U.S.C. § 227(b)(3).

By sending this unsolicited fax advertisement, you violated the TCPA and are now liable to pay a statutory remedy of not less than \$500 per violation under 47 U.S.C. § 227(b)(3). A single faxed page may have multiple TCPA violations, such as headers that do not comply with FCC regulations (47 C.F.R. § 68.318(d)). We have reason to believe that you willfully or knowingly violated the law, which would make you liable for up to \$1,500 per fax.

As you can see, I am serious about enforcing the TCPA and will spare no expense to ensure that federal laws in this area are enforced. To save us both time and effort, we are willing to settle this case for a remedy of \$500.00 per violation for a total of \$2000.00, to do this, call me at (818) 642-2282 and I will send you my standard settlement agreement.

If you do not choose to settle, I can assure you that I will do my part to help enforce the law as Congress intended and we will sue you for violation of the TCPA and the California Unfair Business Practices Act and a demand for treble damages and attorneys' fees.

Not A Lawyer

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

Robert LaBossiere

Plaintiff(s)

vs.

Golden Express, Express Line,

and DOES 1 through 20

Defendants.

CASE :

COMPLAINT FOR VIOLATION OF THE  
TELEPHONE CONSUMER PROTECTION ACT  
OF 1991 (47 U.S.C. 227); TRESPASS

Plaintiff alleges:

FIRST CAUSE OF ACTION, VIOLATION OF THE TELEPHONE  
CONSUMER PROTECTION ACT OF 1991 (47 U.S.C. 227)  
(Against all defendants)

1. Plaintiff is an individual who resides in or does business in Tarzana, California in the County of Los Angeles and within the jurisdiction of this court.
2. Defendant Golden Express, Express Line is, and at all times alleged herein was, a business organization of a form presently unknown that is authorized to do and is doing business in the state of California.
3. Defendants DOES 1 through 20, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to plaintiff. When their true names and capacities are ascertained, plaintiff will amend this complaint by inserting their true names and capacities herein. Plaintiff are informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences alleged in this complaint, and that plaintiff damages as alleged in this complaint were proximately caused by such defendants.
4. Defendants acted as alleged herein within the jurisdictional boundary of this court.
5. Plaintiff is informed and believes and thereon alleges that at all times mentioned in this complaint, each of the defendants was the agent of each of the remaining defendants, and in doing the things

Joseph R. Compoli, Jr.

Attorney At Law

Telephone: 216-481-6700

Facsimile: 216-481-1047

612 East 185th Street

Cleveland, OH 44119

November 11, 2004

Golden Express  
Attn: President or CEO  
1500 Beacon Pl.  
Oxnard, CA 93033

Re: Our Client: Nancy Mills  
File No.: 07-1242-01

Dear Sir/Madame:

This office represents the above referenced client. We have been retained to bring a lawsuit against Golden Express, in connection with your transmitting of one (1) unsolicited facsimile ("fax") advertisements to our client. A copy of this fax is enclosed for your convenience.

Kindly be advised that it is a violation of the federal Telephone Consumer Protection Act (TCPA), Title 47, United States Code, Section 227, to transmit fax advertisements without first obtaining the "prior express invitation or permission" of the recipient. See, 47 U.S.C. 227(a)(4) and 227(b)(1)(C). In addition, Ohio courts have declared that a violation of the TCPA is a "unfair or deceptive" act or practice under the Ohio Consumer Sales Practices Act (CSPA), Section 1345.02(A) of the Ohio Revised Code.

We are sending you this letter for the purpose of offering you an opportunity to resolve this matter without the expense of court litigation and attorneys fees. We are authorized to amicably settle this claim for the amount of **\$3,400**. This amount represents the sum of \$1,500 under the TCPA and \$200 under the CSPA for each unsolicited fax advertisement which was received by our client.

The TCPA provides for statutory damages in the sum of **One Thousand Five Hundred Dollars (\$1,500)** per each unsolicited fax advertisement received, if the fax was sent "willfully." 47 U.S.C. 227(b)(3). "The term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision" of the statute. See, 47 U.S.C. 312 (f)(1).

In other words, the term "willfully" simply means that you acted voluntarily, under your own free will, and regardless of whether you knew you were acting in violation of the statute. See, e.g., *In Re: Audio Enterprises, Inc.*, 1988 WL 486782; 3